

## CONSULTING SERVICES AGREEMENT

**THIS AGREEMENT** is made and entered by and between COLLIN COUNTY, TEXAS, a political subdivision of the State of Texas, hereinafter referred to as “County”, and The Nature Conservancy, a non-profit corporation, hereinafter referred to as “Consultant”, to be effective from and after the date as provided herein.

### WITNESSETH:

**WHEREAS**, the County desires to engage the services of the Consultant to continue a program to restore Parkhill Prairie. The program will include 1) Herbicide application, 2) Installation of prescribed fire, 3) Supervision, if needed, of mowing and removal of vegetation, 4) Treatment of johnsongrass, purple scabies, and encroaching woody vegetation on an as-needed basis. Restoration and management work at Parkhill Prairie, hereinafter referred to as the “Project”; and

**WHEREAS**, the Consultant desires to render such services for the County upon the terms and conditions provided herein.

### **NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:**

That for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

#### **I. Employment of the Consultant**

The County hereby agrees to retain the Consultant to perform services in connection with the Project; Consultant agrees to perform such services in accordance with the terms and conditions of this Agreement, exercising the same degree of care, skill, and diligence as is ordinarily possessed and exercised by a member of the same profession, currently practicing, under similar circumstances.

#### **II. Scope of Services**

The parties agree that Consultant shall perform such services as are set forth and described in Exhibit “A”, which is attached hereto and thereby made a part of this Agreement. The parties understand and agree that deviations or modifications in the form of written change orders may be authorized from time to time by the County.

#### **III. Schedule of Services**

The Consultant agrees to commence its services immediately upon execution of this Agreement, or as otherwise directed in writing by the County, and to proceed diligently with said services to completion as described in the Completion Schedule attached hereto as Exhibit “B” and thereby made a part of this Agreement. Consultant shall not be considered in default of this Agreement for delays in performance caused by circumstances beyond its reasonable control. Should such circumstances occur, the Consultant shall, within a reasonable time of being prevented from performing, give written notice to the County describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

**IV. Compensation and Method of Payment**

The parties agree that Consultant shall be compensated for all services provided pursuant to this Agreement in the amount and manner described and set forth in the Payment Schedule attached hereto as Exhibit "C" and thereby made a part of this Agreement. Consultant further agrees that it will prepare and present such monthly progress reports and itemized statements as are described in said Exhibit "C".

**V. Information to be provided by the County**

The County agrees to make available to Consultant, prior to the Consultant's commencement of its services, all that information set forth and described on Exhibit "D", which is attached hereto and thereby made a part of this Agreement.

**VI. Insurance**

Consultant agrees to meet all insurance requirements as set forth on Exhibit "E" which is attached hereto and thereby made a part of this Agreement.

**VII. Indemnity**

The Consultant agrees to indemnify and hold harmless the County and its officers, agents and employees of and from any and all damages, injuries (including death), claims, property damages (including loss of use), losses, to the extent caused by negligent act, error or omission of the Consultant, its agents, servants, employees, subcontractors, licensees, invitees, or any other persons or entities for whose acts the Consultant is liable. The Consultant's total liability under this indemnity shall not exceed \$250,000.

**VIII. Independent Contractor**

In the performance of services hereunder, the Consultant shall be deemed an independent contractor and shall not, with respect to its acts or omissions, be deemed an agent or employee of the County.

**IX. Assignment and Subletting**

The Consultant agrees that neither this Agreement nor the services to be performed hereunder will be assigned or sublet without the prior written consent of the County. The Consultant further agrees that the assignment or subletting or any portion or feature of the services required in the performance of this Agreement shall not relieve the Consultant from its full obligations to the County as provided by this Agreement. For the purposes of this agreement, the County consents to the subcontracting of Services by the Consultant. All other requirements of Section IX will continue to apply, and in addition Consultant agrees to favorably satisfy any dispute with subcontractors and hereby releases the County from any liability, including but not limited to payments, involving such disputes to the extent the dispute or liability is not caused by the act, error or omission of the County.

**X. Audits and Records/Prohibited Interest**

The Consultant agrees that at any time during normal business hours, and as often as County may deem necessary, Consultant shall make available to representatives of the County for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the County to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, and other data relating to all matters covered by this Agreement, all for a period of one (1) year from the date of final settlement of this Agreement or of such other or longer period, if any, as may be required by applicable statute or other lawful requirements.

The Consultant agrees that it is aware of the prohibited interest requirements of the state law which are applicable to persons entering into contracts with the County and will abide by the same.

Further, a lawful representative of Consultant shall execute the Affidavit shown in Exhibit "F". Consultant understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the agreement voidable.

**XI. Contract Termination**

The parties agree that County shall have the right to terminate this Agreement without cause upon thirty (30) days written notice to Consultant. In the event of such termination without cause, Consultant shall deliver to County all finished or unfinished documents, data, studies, surveys, reports, or other items prepared by Consultant in connection with this Agreement. Consultant shall have the right to terminate this Agreement without cause upon thirty (30) days written notice to County in the event of the County's breach of any material term of the Agreement, including but not limited to compensation and method of payment. Regardless of which party initiates termination, Consultant shall be entitled to compensation for any and all services completed to the satisfaction of County in accordance with the provisions of this Agreement prior to termination.

**XII. Ownership of Documents**

Original reports and/or specifications created by Consultant shall become the property of the County. County grants to the Consultant a royalty-free non-exclusive license to use the reports, specifications and any other data created or produced under this Agreement.

**XIII. Complete Contract**

This Agreement, including the exhibits hereto numbered "A" through "F", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

**XIV. Mailing of Notices**

Unless instructed otherwise in writing, Consultant agrees that all notices or communications to the County permitted or required under this Agreement shall be addressed to the County at the following address:

Collin County Purchasing Department  
2300 Bloomdale Rd., Suite 3160  
McKinney, Texas 75071

County agrees that all notices or communications to Consultant permitted or required under this Agreement shall be addressed to Consultant at the following address:

The Nature Conservancy  
Attn: Jim Eidson  
P.O. Box 26  
Celeste, Texas 75423  
jeidson@tnc.org  
903-568-4139 phone/fax

All notices or communications required to be given in writing by one party or the other shall be considered as having been given on the date such notice or communication is posted by the sending party.

**XV. Miscellaneous**

**A. Paragraph Headings**

The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

**B. Interpret Contract Fairly**

Although this Agreement is drafted by County, should any part be in dispute, the parties agree that the Agreement shall not be construed more favorable for either party.

**C. Venue/Governing Law**

The parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Collin County, Texas.

**D. Parties Bound**

County and Consultant, and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

**E. Severability**

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision shall be deleted and the remainder of the Agreement shall remain in full force and effect.

**F. Effective Date**

This Agreement shall be effective from and after execution by both parties hereto.

**G. Term of Agreement**

The term of agreement shall conform to the schedule as stipulated in Exhibit "B" attached herein. No other extension shall be authorized unless granted by written agreement between the County and the Consultant.

**H. Funding**

Funds for payment for Collin County expenditures have been provided through the Collin County budget approved by the Commissioners' Court for 2013 fiscal year only, October 1, 2012 through September 30, 2013. State of Texas statutes prohibit any obligation of public funds beyond the fiscal year for which a budget has been approved. Therefore, anticipated orders or other obligations that arise past the end of the current fiscal year shall be subject to budget approval. The County shall notify the Consultant at least 30 days prior to the end of each Year identified on Exhibit B as to the approval of the funding for the next Year.

**WITNESS OUR HANDS AND SEALS** on the date indicated below.

**COLLIN COUNTY, TEXAS**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Michalyn Rains, CPPO, CPPB  
Purchasing Agent

**THE NATURE CONSERVANCY**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_



## EXHIBIT “A”

### SCOPE OF SERVICES

#### **Introduction**

The Texas Blackland Prairie once stretched over 12 million acres from the Red River to San Antonio. The advent of cotton agriculture in the late 19<sup>th</sup> and subsequent urbanization in the 20<sup>th</sup> century diminished the prairie to 1/100<sup>th</sup> per cent of its original extent. The Texas Blackland Prairie has become one of the most endangered large ecosystems in North America.

In the mid-1980’s Collin County undertook one of the first efforts in north Texas to protect and restore the prairie in its acquisition of the 436-acre Parkhill Prairie. Hailed as “A Texas Heritage for Future Generations”, the Park’s mission was to avail the public opportunities to appreciate its prairie heritage. Interpretive kiosks, shelters and nature trails provided access for hikers, birdwatchers, school groups and picnickers. Though other scattered small prairie preserves existed, Parkhill Prairie was unique in its attempt to integrate human use, preservation and restoration.

The centerpiece of the Park--essentially the reason for the Park’s creation—was a 52-acre remnant prairie. The prairie is a product of an extreme drought which followed the end of the last ice age, about 10,000 years ago. Although the exact age of the prairie is hard to determine, it is likely that it is 5,000 – 8,000 years old. It is relatively easy for us to conceive of an old growth forest, but Parkhill is, in fact, an old growth grassland. Nearly all of the hundreds of species of native plants growing there are perennial—that is—they grow back from roots and tubers each year, with root systems penetrating to a depth of up to 15 feet. Many of the individual plants on Parkhill prairie are certainly decades if not hundreds of years old. One anecdote has it that big bluestem, a grass common on the prairie, may live more than 400 years. Further, the prairie hosts insects and animals known only from tall grass prairie remnants. For example, in the late 1980’s, Dr. Ken Steigman, then with the Heard Museum, discovered a new species of crayfish on Parkhill Prairie. This unusual crayfish lives in burrows on otherwise dry land, burrowing to the water table at depths of more than six feet. In addition to this unusual behavior, eyeless, unpigmented isopods (small, swimming crustaceans) co-habit the burrows.

In order to further expand the prairie, thirty adjoining acres were planted in 1991 with almost 70 species of native grass and wildflower seed harvested from Parkhill’s remnant prairie and from the nearby Clymer Meadow, a remnant prairie preserve owned by The Nature Conservancy. The prairie reconstruction became recognized as one of the state’s largest and most successful. After 20 years, the reconstruction has become hard to distinguish from the remnant prairie.

Parkhill Prairie is a jewel in the crown of our Texas natural heritage. Collin County citizens and government gave the greater public a great gift in the preservation of this resource.

Over the past 7 years, The Nature Conservancy contracted with Collin County to treat exotic invasive species, especially tall fescue, through herbicide application, and prescribed mowing and fire. This has resulted in the reduction of tall fescue cover from an estimated 40% in some areas to less than 20%. Further, encroachment by trees and shrubs has been drastically reduced as has been Johnsongrass cover.

However, particularly for the control of tall fescue, continued management will be necessary. Toward this objective, the county contacted The Nature Conservancy regarding resumption of contractual work on a year to year basis.

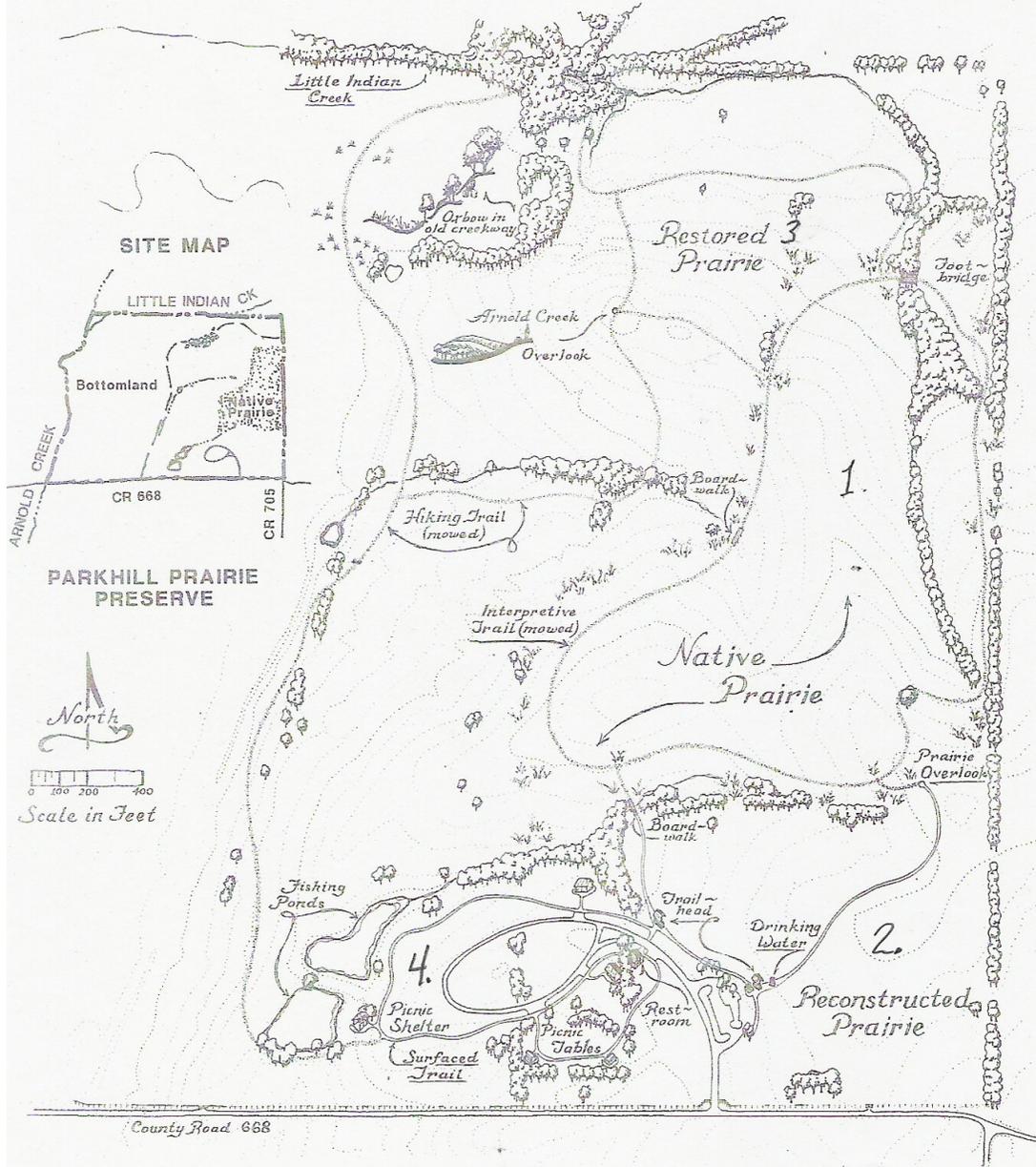
**Scope of Work**

During the 2013 calendar year, and for the next succeeding 4 years, the following tasks will be undertaken:

- For year 1, herbicide application on exotic or native invasive plants, including johnsongrass and purple scabies. Conduct growing season survey on tall fescue cover. For each succeeding year of the contract:
- Herbicide application on those portions of the prairie still supporting substantial cover of tall fescue.
- Installation of prescribed fire on at least ½ of the remnant prairie.
- If needed, supervision of mowing and removal of vegetation on ½ on the remnant prairie.
- Treatment of johnsongrass, purple scabies, and encroaching woody vegetation on an as-needed basis.

# Parkhill Prairie

A Texas Heritage for Future Generations



A Collin County Open Space Facility

Collin County Public Works ~ McKinney, Texas ~ 1-214-548-4619

**EXHIBIT “B”**

COMPLETION SCHEDULE

**Budget**

|                      |                   |
|----------------------|-------------------|
| <b>Year 1 - 2013</b> |                   |
| personnel            | \$ 1,200.00       |
| Supplies             | \$1, 500.00       |
| Direct               | \$2,700.00        |
| Indirect at 18%      | \$486             |
| <b>Total Request</b> | <b>\$3,186</b>    |
| <b>Year 2- 2014</b>  |                   |
| personnel            | \$3,600.00        |
| Supplies             | \$1,300.00        |
| Direct               | \$4,900.00        |
| Indirect at 18%      | \$882.00          |
| <b>Total Request</b> | <b>\$5,782.00</b> |
| <b>Year 3 - 2015</b> |                   |
| personnel            | \$3,600.00        |
| Supplies             | \$1,300.00        |
| Direct               | \$4,900.00        |
| Indirect at 18 %     | \$882.00          |
| <b>Total Request</b> | <b>\$5,782.00</b> |
| <b>Year 4 - 2016</b> |                   |
| personnel            | \$3,600.00        |
| Supplies             | \$1,300.00        |
| Direct               | \$4,900.00        |
| Indirect at 18 %     | \$882.00          |
| <b>Total Request</b> | <b>\$5,782.00</b> |
| <b>Year 5 - 2017</b> |                   |
| personnel            | \$3,600.00        |
| Supplies             | \$1,300.00        |
| Direct               | \$4,900.00        |
| Indirect at 18 %     | \$882.00          |
| <b>Total Request</b> | <b>\$5,782.00</b> |
|                      |                   |
| <b>Total Request</b> | <b>\$26,314</b>   |

\*Includes NTX staff, fire crew salaries, and overtime when deemed necessary by Consultant to accomplish project objectives.

\*\* 13 gallons glyphosate x \$45/gal.

\*\*\* Includes replacement parts for equipment, small tools.

**EXHIBIT “C”**

PAYMENT SCHEDULE

Invoices will be transmitted to the County on a monthly basis billing for actual time and expenses incurred. See Exhibit “B”. The County shall remit payment in accordance with V.T.C.A. Government Code 2251.

**EXHIBIT “D”**

INFORMATION TO BE PROVIDED BY THE COUNTY

The County will make available to the Consultant any data relating to the projects specifically defined in Exhibit “A” and/or information pertaining to the existing contracts and/or services currently being provided to the County.

## **EXHIBIT “E”**

### INSURANCE REQUIREMENTS

1. Insurance: Before commencing work, the vendor shall be required, at his own expense, to furnish the Collin County Purchasing Agent within ten (10) days of notification of award with certified copies of all insurance certificate(s) showing coverage for all requirements as stated below to be in force throughout the term of the contract.
  - 1.1 Commercial General Liability insurance at minimum combined single limits of (\$5,000,000 per-occurrence and \$5,000,000 general aggregate) for bodily injury and property damage, coverage shall include independent contractors coverage at limits of \$1,000,000 (only necessary if vendor employs independent contractors). Professional Liability Insurance at minimum limits of \$1,000,000. This coverage must stay in force two (2) years after completion of the project.
  - 1.2 Workers Compensation insurance at statutory limits, including employers liability coverage at minimum limits. In addition to these, the contractor must meet each stipulation below as required by the Texas Workers Compensation Commission; (Note: If you have questions concerning these requirements, you are instructed to contact the TWCC at (512)440-3789).
  - 1.3 Commercial Automobile Liability insurance shall be no less than \$500,000 combined single limits per accident for bodily injury and property damage, including owned, non-owned, and hired vehicle coverage.
  - 1.4 Pesticide and Herbicide Endorsement: Contractor shall endorse their General Liability policy with a Pesticide and Herbicide Applicator Coverage Endorsement, CG 22 64 07 98.
2. The required limits may be satisfied by any combination of primary, excess or umbrella liability insurance, provided the primary policy complies with the above requirements and the excess umbrella is following form. The vendor may maintain reasonable and customary deductibles, subject to approval by Collin County.
3. With reference to the foregoing insurance requirement, the vendor shall specifically endorse applicable insurance policies as follows:
  - 3.3.1 A waiver of subrogation in favor of Collin County, its officials, employees, volunteers and officers shall be contained in the workers compensation coverage.
  - 3.3.2 The vendor's insurance coverage shall name Collin County as additional insured under the General Liability policy.
  - 3.3.3 All insurance policies shall be endorsed to require the insurer to immediately notify Collin County of any decrease in the insurance coverage limits.
  - 3.3.4 All insurance policies shall be endorsed to the effect that Collin County will receive at least thirty (30) days notice prior to cancellation, non-renewal or termination of the policy.
  - 3.3.5 All copies of Certificates of Insurance shall reference the agreement number.
- 3.4 All insurance shall be purchased from an insurance company that meets the following requirements:

AGREEMENT NO. 2013-067

- 3.4.1 A financial rating of B+VI or better as assigned by the BEST Rating Company or equivalent.
- 3.5 Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, and shall contain provisions representing and warranting the following:
  - 3.5.1 Sets forth all endorsements and insurance coverage's according to requirements instructions contained herein.
  - 3.5.2 Sets forth the notice of cancellation or termination to Collin County.

